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ABSTRACT

This "Legal Memorandum" reviews administrator employment rights in each state. In 19 jurisdictions principals and other administrators are granted some kind of substantive tenure protection in their administrative positions. However, even in states providing tenure protection for administrators, there are situations in which a school board may terminate educators when "just cause" does not exist. One justification usually recognized by the courts is economic necessity, such as declining revenues. To meet changing circumstances school boards are also increasingly seeking to reassign principals and other administrators to new and different duties. While stopping short of providing full, substantive tenure rights, a growing number of state legislatures have chosen to provide procedural safeguards to principals threatened with termination. The states of Minnesota, Missouri, and Wisconsin grant tenure rights only to principals employed in densely populated areas while denying it to principals in the smaller, rural school districts. Twenty-three states do not provide administrators with tenure as administrators, but permit them to achieve tenure status as teachers. Only Arkansas and South Carolina provide no tenure, even to teachers, but do afford some procedural protection in case of nonrenewal. (MLF)

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# A Legal Memorandum

MARCH 1990 *National Association of Secondary School Principals* ISSN 0192-6152

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A Legal Memorandum

MARCH 1990 National Association of Secondary School Principals ISSN 0192-6152

# Administrator Tenure Statutes and Other Legislative Protection of Position

Unlike some other areas of the law affecting educational administrators, a principal's employment protection rights are determined primarily by state statutes. Some of these statutes provide qualified educators with an assurance of continued employment as administrators unless just cause can be shown for dismissal or demotion. These are properly regarded as tenure laws.

The purpose of administrator tenure laws—like teacher tenure laws—is to enhance the stability and quality of public education by providing deserving educators with an assurance of continued employment. While many states provide administrator tenure rights by statute, a majority limit this kind of employment protection to retention as a teacher. School administrators in these states, therefore, continue to serve in their positions only for the length of their contracts, which are renewable at will of the local school board.

In the six years since the last *Memorandum* about this subject, few state legislatures have seen fit to enact such statutes; and among the states that have such laws on the books, there are marked differences in the type and amount of job security provided.

This *Legal Memorandum* reviews administrator employment rights in each state and attempts to bring our last report up to date. Because statutes change, however, and because some are not completely clear, every administrator should check with his or her state association, state office of education, or similar local authority to be certain of the current provisions and to note whether they have been interpreted by the state's courts.

The statutory information provided here is as accurate as possible as of September 1, 1989.

EA 021909

## Tenure as a Principal

The following 19 jurisdictions grant principals and other administrators some kind of substantive tenure protection in their administrative positions:

| | | |
|---|---|---|
| Alabama | Massachusetts | North Carolina |
| District of Columbia | Michigan | Oregon |
| Florida | Nebraska | Pennsylvania |
| Georgia | Nevada | South Dakota |
| Hawaii | New Jersey | Washington |
| Iowa | New York | West Virginia |
| Louisiana | | |

The specific provisions, such as the length of the probationary periods new administrators must serve before tenure is conferred, and the exact steps to be followed before dismissal vary from state to state. Also, it should be noted that Louisiana specifically excludes assistant principals and other supervisory personnel from the employment protection granted principals.

However, there is a general similarity among statutes regarding the type of procedures required before dismissal can be made final. Nearly all the provisions mandate protections such as notice of intent to dismiss with an explanation of the reasons for termination. A hearing at which the principal can contest the charges is also usually specified. But the key factor in a true tenure statute is the substantive requirement that dismissal can only occur for a statute-defined cause.

The following excerpt from the Massachusetts Code is a good example of a principal tenure statute:

> No principal, supervisor, assistant principal, or professional employee performing the duties of a principal, supervisor, assistant principal, by whatever title his

> position may be known, who has served in that position for over three years shall without his consent be demoted *except for inefficiency, incompetency, incapacity, unbecoming conduct, insubordination, or other good cause;* nor unless, at least 30 days exclusive of customary vacation periods, prior to the meeting at which the vote is to be taken, he shall have been notified of such intended vote; nor unless, if he so requests he shall have been furnished by the committee with a written charge or charges of the cause or causes for which his demotion is proposed; nor unless, if he so requests, he has been given a hearing before the school committee, which may be either public or private at the discretion of the school committee, and at which he was to be represented by counsel, present evidence, and call witnesses to testify in his behalf and examine them; nor unless the charge or charges shall have been substantiated; nor unless the superintendent shall have given the committee his recommendations thereon.[1] (Emphasis added)

## Just Cause

The most important safeguard provided by tenure statutes is the requirement that there be "just cause" or some other stated cause for the termination. This prerequisite is intended to ensure that dismissal is not motivated by personal animosity, political motivation, or mere caprice.

"Just cause" has been defined as "one which directly or indirectly, significantly, and adversely affects what must be the ultimate goal of every school system: high quality education."[2] Yet the courts have had difficulty applying this standard to individual cases. A school board may consider novel methods or unorthodox behavior as creating an adverse effect, and hence grounds for termination.

To avoid this problem, a hearing officer or judge will generally seek factual evidence of a substantial detrimental effect before validating a school district's claim that "just cause" exists.

## Reductions in Force (RIF)

Even in states providing tenure protection for administrators, there are situations in which a school board may terminate educators when "just cause" does not exist. One justification usually recognized by the courts is economic necessity, such as declining revenues. Falling enrollments, too, may be regarded as justifying reductions in force (RIFs), and such factors have become a frequently invoked basis for nonrenewal of administrators as well as teachers.

Some statutes specifically exempt RIF terminations from the requirements of the tenure act. In other states the courts have found the legitimate financial necessity of reductions, caused by changing population demographics, to constitute exceptions to the relevant tenure provisions. Courts will inquire into the legitimacy of a RIF dismissal to avoid "a subterfuge by which an unscrupulous school board would use a fictitious necessity for staff reduction as a pretext for discharging" an educator.[3] In the absence of evidence that such subterfuge exists, however, administrator tenure provisions offer little protection against the elimination of positions for budgetary reasons.[4]

## Demotions

To meet changing circumstances, school boards are also increasingly seeking to reassign principals and other administrators to new and different duties. They will usually try to characterize these reassignments as "transfers" rather than "demotions" which may be barred by statute. The Massachusetts statute cited above includes, for example, the following:

> For the purpose of this section, a person shall be deemed to have been demoted if his salary has been reduced contrary to the provisions of Section 43 of this chapter, or if he has been transferred without his consent to a position wherein he no longer serves at discretion.
>
> Any person who has been demoted by vote of a school committee under the provisions of this Section may within 30 days after the vote of dismissal or demotion appeal therefrom to the superior court in the county in which he was employed.

In absence of such clear statutory definition it is often difficult to distinguish changes of assignment that entail no downgrading of the principal's status from those which are, in actuality, thinly veiled demotions. And, unless the transfer is classified as a demotion, a principal may be unable to invoke tenure protection even in the states that provide job protection for administrators.

Tenure laws cannot safeguard an administrator against all transfers. In Georgia, for example, the courts have held that a transfer is not a demotion unless there is a reduction in all three of the following: salary, responsibility, and prestige.[5] However, courts in some other jurisdictions hold a different view. These courts have recognized that a myriad of deleterious effects may result from a transfer, and, therefore consider the totality of harms and effects from a transfer to determine if tenure protections are warranted.

Under this approach, a transfer entailing diminished authority, even though the salary remains unchanged, has been deemed a demotion.[6] Where the statute so specifies, of course, if the principal with administrative tenure is unable to obtain tenure in the new position, the principal may also be considered to have been demoted.[7] Similarly, while a reassignment may not bring an immediate reduction in salary, diminished future earnings may justify the contention that the reassignment is a demotion.[8]

Administrator employment protection statutes were presumably intended to provide safeguards against precisely these ramifications that arise from a major change of duties, whether labeled a reassignment, transfer, or demotion. For this reason, those courts that have applied tenure requirements to transfers with accompanying harmful effect would appear to have taken the more logical view.

## Procedural Protection

While stopping short of providing full, substantive tenure rights, a growing number of state legislatures have chosen to provide procedural safeguards to principals threatened with termination. (Some of these states do provide administrators with teacher tenure; others do not. See next section.) Some of the states that stress this kind of procedural protection for administrators are: Indiana, Kansas, Kentucky, Mississippi, New Hampshire, Rhode Island, Virginia.

The procedural statutes require a minimum notice period and some kind of a hearing or meeting with the board or superintendent. Usually, too, a written statement of the reasons for termination or reassignment must be given before a principal may be reassigned. Unlike full tenure, the procedural statutes do not mandate that removal shall be for enumerated and defined reasons only. Instead, dismissal may occur for any reason so long as it is not a legally impermissible one.

The difference is, of course, an important one. A section of the Rhode Island Code is indicative of this type of statute:

> The general assembly recognizes that administrators are not members of teacher collective bargaining units and, therefore, are not protected by the terms of teacher bargaining agreements. While clearly intending neither to interfere with the discretion of school committees to choose those who shall administer local schools nor to grant tenure to school administrators, the general assembly deems it necessary to the orderly and effective functioning of public education *to inform school administrators of the bases or reasons for their suspension, dismissal or nonrenewal of their employment relationship, and to afford administrators an opportunity to be heard before the school committee.* Full disclosure of the bases or reasons for suspension, dismissal or nonrenewal and the hearing which may follow, while providing administrators and school committee a meaningful hedge against mistaken or impermissible actions as well as an opportunity to question and confront those individuals whose judgment or allegations furnish the basis for the actions taken, are ultimately intended to erase harmful innuendo from any suspension, dismissal or nonrenewal of an administrator.[9] (Emphasis added).

A hearing at which a principal may present his or her case is the sole protection against arbitrary and unwarranted removal provided by procedural-protection legislation. Without a just cause requirement there is often little basis upon which a principal may build a successful defense in a termination proceeding. The problem is exacerbated by the fact that in many jurisdictions the hearing will be conducted by the local school board, which is likely to be leaning very strongly toward taking the action threatened if it has not, in fact, already made up its mind. The formal hearing may, therefore, be a hollow safeguard.

Some courts have even questioned whether a fair and impartial hearing can be conducted before a body of persons whose chief employee, the superintendent, has made the recommendation for termination. Such a procedure may even violate an administrator's 14th Amendment due process rights "by allowing the board to simultaneously serve as a prosecutor, judge, and jury."[10] But, the U.S. Supreme Court has placed a heavy burden upon the person seeking to challenge the board's objectivity, and will not automatically presume bias.[11]

All this being said, the opportunity of a hearing at which the administrator may present his or her position to the board is better than nothing and may, if nothing else, establish a basis for further appeals.

## Urban-Rural Tenure Distinction

A few states grant tenure rights only to principals employed in densely populated areas while denying it to principals in the smaller, rural school districts. This is true in Minnesota, Missouri, and Wisconsin.

These three states share some common characteristics. Each contains sparsely inhabited rural areas along with a few large urban centers. Their legislatures apparently perceive a meaningful difference in the needs of the large and small school districts and want to preserve flexibility in the management of personnel in districts with small enrollments. The larger districts are therefore regarded as being able to provide tenure protection without assuming excessive financial burdens, while administrators in the

smaller school districts are either denied eligibility for tenure in position, or receive tenure as teachers only.

## Tenure as a Teacher

As indicated previously, many states do not provide administrators with tenure as administrators, but permit them to achieve tenure status as teachers. These 23 states are:

| | | |
|---|---|---|
| Alaska | Indiana | Oklahoma |
| Arizona* | Maine | Rhode Island |
| California | Maryland | Texas |
| Colorado | Montana | Tennessee |
| Connecticut | New Hampshire | Utah |
| Delaware | New Mexico** | Vermont |
| Idaho | North Dakota | Wyoming |
| Illinois | Ohio | |

* If teaching at least half-time
**Retained only for two years in district after accepting administrative position

Under these statutes, educators who gain teacher tenure in a school district retain these rights upon promotion to principal or assistant principal. These administrators are thus ensured of continuing service with the school district, although not of continuing in the capacity of an administrator. Under this type of statute, at the end of his or her administrative contract a principal may be reassigned to classroom teaching or any other position for which he or she is properly certified. In some of these states, however, the principal returned to the classroom has the right to maintain an administrative salary.

## Non-Tenure States

Six years ago, eight states provided no tenure, even to teachers. Today only Arkansas and South Carolina remain, and even these afford some procedural protection in case of nonrenewal.

Both of these states are primarily rural, and their legislatures may, therefore, have adopted the same view as those in states which have provided statutory protection only to administrators in the urban parts of their states.

## Conclusion

In the last six years, numerous states have enacted legislation that has increased the employment protection available to administrators. Often, however, this protection has not been through the tenure route. While only a handful of states have revoked existing tenure provisions, legislatures, especially in the more industrialized states, have preferred to increase and enhance employment security by developing procedural protections such as the right to be given specific reasons for proposed nonrenewal and an opportunity to meet and discuss the matter with the board.

Another type of legislative job protection for administrators authorizes multi-year contracts, usually for terms of two or three years. Such provisions are rarely, if ever, mandatory, and still permit nonrenewal without cause or opportunity for hearing at the end of the contract term. They do provide greater assurance of continuity, however, than the typical year-to-year contract, and if issued on an overlapping basis, will ensure an administrator a longer period of time to find a new position should a contract fail to be renewed.

Principals should be aware of the kind and degree of employment protection afforded them by statute in their states. Knowledge of one's employment rights is indispensable in ensuring that all procedures and guidelines are observed in the event of an attempted transfer or dismissal.

## Endnotes

1. Mass. Stats., Chap. 71, Sec. 42A.
2. Briggs v. Board of Directors, 282 N.W. 2d 740, 743 (Iowa 1979).
3. Hagarty v. Dysart-Geneseo Community School District, 282 N.W. 2d 92, 99 (Iowa, 1979); *accord*. Ryan v. Ambach, 419 N.Y.S. 2d 214, 216 (App. Div. 1979).
4. See Lane v. School Committee, 392 N.E. 2d 531, 532, Mass. 1979.
5. Rockdale County School District v. Weil, 266 S.E. 2d 919, (Ga. 1980).
6. Jefferson County-DuBois Voc. Tech. School v. Horton, 413 A. 2d 36 (Pa. 1980).
7. (Mass. Stat. C. 71 Sec. 42A.)
8. Cooper v. Board of Education of Somerset, 587 S.E. 2d 845, (Ky. 1979).
9. R.I. G.L. Sec. 16-12.1-1
10. Briggs v. Board of Directors, *supra*. 744.
11. Hortonville Dist. v. Hortonville Educ. Assoc., 426 U.S. 482 (1976).

*This Legal Memorandum was prepared by NASSP's director of legal and governmental affairs, Ivan Gluckman, with the substantial research assistance of attorney Thomas Koerner, Jr., of Vienna, Virginia.*

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